

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE ARBITRATION

between

RICHARD ABONDOLO, as Chairman of the Board of Trustees of UFCW LOCAL 174 COMMERCIAL HEALTH CARE FUND, and RICHARD ABONDOLO, as Chairman of the Board of Trustees of UFCW LOCAL 174 PENSION FUND,

Petitioners,

-v-

H. & M. S. MEAT CORP., a/k/a H & M S MEAT CORP.,

Respondent.

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DATE FILED: <u>11/8/07</u>

No. 07 Civ. 3870 (RJS)

ORDER

RICHARD J. SULLIVAN, District Judge:

Petitioners filed on May 17, 2007 a petition to confirm an arbitration award. The respondent was served on June 12, 2007. No answer has been filed, nor have respondents appeared in the case. Default judgment is not appropriate in an arbitration proceeding where the respondents have failed to appear. The Court can, however, decide the petition as "akin to a motion for summary judgment based on the movant's submissions." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Nevertheless, the Second Circuit has instructed that even where the non-moving party fails to respond, the district court should decide the case on the record rather than "only the allegations of one party found in complaints." *Id.* Therefore, it is hereby ORDERED that the petitioners shall support their petition for confirmation with appropriate materials, including the collective bargaining

agreement, a statement of costs and legal fees sought, and any other supporting documentation that may be relevant, by November 26, 2007.

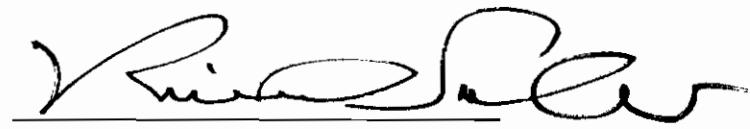
It is further ORDERED that respondent's opposition is due December 10, 2007.

It is further ORDERED that petitioners' reply is due December 17, 2007.

It is further ORDERED that courtesy copies of all motion papers be submitted to chambers in accordance with this Court's Individual Practices.

SO ORDERED.

DATED: New York, New York
 November 7, 2007


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE